

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
WATER, LAND, & HAWAIIAN AFFAIRS**

**Friday, March 15, 2019  
9:30 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE CONCURRENT RESOLUTION 06  
AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT  
COVERING A PORTION OF STATE SUBMERGED LANDS AT KUKUIULA, KOLOA,  
KONA, KAUAI, FOR A SEAWALL AND STEPS, AND FOR USE, REPAIR, AND  
MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON**

House Concurrent Resolution 06 requests the authorization to issue a term, non-exclusive easement covering 106 square feet, more or less, portion of state submerged lands identified as tax map key: (4) 2-6-011:seaward of 019, at Kukuiula, Koloa, Kona, Kauai for the use, repair, and maintenance of the existing seawall and steps constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources ("Department") supports this measure.**

The current owners (grantees) of the abutting property, Edmund and Linda Gregoire, worked with the Department to resolve the encroachments. The improvements were found encroaching on State lands located makai of the shoreline and such area should be considered as submerged lands. As required by Section 171-53, HRS, the Board of Land and Natural Resources ("Board") may lease submerged lands "with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution". At its meeting on September 23, 2016, under agenda item D-1, the Board approved the issuance of a term, non-exclusive easement for purposes stated above.

The grantees has paid the State the fair market value of the easement, in the amount of \$7,820, as determined by an independent appraisal for the use of public lands.

Thank you for the opportunity to comment on this measure.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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OF COUNSEL  
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COUNSEL  
LORNA A. NISHIMITSU

Federal ID No. 99-0317663

March 13, 2019

Honorable Ryan I. Yamane, Chairman, and  
Members of the Committee on Water, Land and Hawaiian Affairs  
House of Representatives  
State of Hawaii  
415 South Beretania Street  
Honolulu, Hawaii 96813

**Via Email Only**

RE: House Concurrent Resolution 6  
Authorizing the Issuance of a Term, Non-Exclusive Easement  
Covering a Portion of State Submerged Lands at Kukuiula, Koloa,  
Kona, Kauai, for a Seawall and Steps, and for Use, Repair, and  
Maintenance of the Existing Improvements Constructed Thereon  
Tax Key No.: (4) 2-6-11:019

Dear Chairman Yamane and Members of the Committee:

This office represents Edmund Donald Gregoire and Linda Lee Gregoire, husband and wife (collectively "Applicant"), who acquired property identified as TMK: (4) 2-6-11-019 located at Kukuiula, Koloa, Island and County of Kauai, State of Hawaii (the "Property"), by Warranty Deed dated December 24, 2014 and recorded as Document No. A-54780134.

A shoreline survey was prepared by Anthony D. Crook as part of the acquisition, a copy of which is attached as Exhibit "1", which shows the shoreline along the top, seaward edge of the shoreline.

The Property was fully improved at the time of acquisition with a single family dwelling, driveway and seawall along the makai edge, although the single family residence was in relatively poor condition. Because of the condition of the Property, Applicant began taking steps for renovations/repairs, and in order to do such repairs, was required first to have a new shoreline survey prepared.

Roger M. Caires prepared the new shoreline survey, which locates the shoreline along the seaward edge of the shoreline and which jogs inland at the location of concrete steps. The new shoreline survey map is enclosed as Exhibit "2", and was transmitted to Mr. Ian Hirokawa,

Honorable Ryan I. Yamane, Chairman, and  
Members of the Committee on Water, Land and Hawaiian Affairs  
Page 2  
March 13, 2019

Special Projects Coordinator with the Land Division of DLNR by cover letter dated November 24, 2015.

The new shoreline survey indicates that because the shoreline jogs in at the concrete steps, there is an encroachment containing a total of 106 square feet, for which the Applicant will require an easement. In short, because the shoreline now jogs inland of the steps as shown on Exhibit "2", there is an encroachment.

An easement for the encroaching concrete steps is required in order to allow the Applicant to retain the steps in lieu of removal of the encroachment.

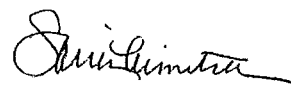
The Office of Conservation and Coastal Lands ("OCCL") determined, in letter dated January 27, 2016, a copy of which is attached as Exhibit "3", that requiring removal of the concrete steps that comprise a portion of the sea wall would not improve beach resources, nor would it improve public access. While OCCL also determined that removal of the encroaching portion of the seawall would not have significant adverse effects on adjacent properties, it also noted that the two properties immediately adjacent to the Property had seawalls. Finally, OCCL determined that, after considering the "requirements stated in HRS §205A, HRS § 183C and OCCL's evaluation criteria", the requested easement is a supportable action.

At its meeting of September 23, 2016, the Board of Land & Natural Resources approved the granting of an easement in favor of the Gregoires, subject to the payment of the value of the easement and the payment of the appraisal fees for determining the value of the easement, and further subject to obtaining a Resolution from the Hawaii State Legislature authorizing such grant. The Gregoires subsequently paid for a State-selected appraiser, who appraised the value of the easement area of 106 square feet as \$7,875.00. The Gregoires remitted the payment of \$7,875.00 to the State by cover letter dated July 9, 2018.

Based upon all of the above, the Gregoires respectfully request that your Committee approve House Concurrent Resolution as submitted.

Very truly yours,

BELLES GRAHAM LLP

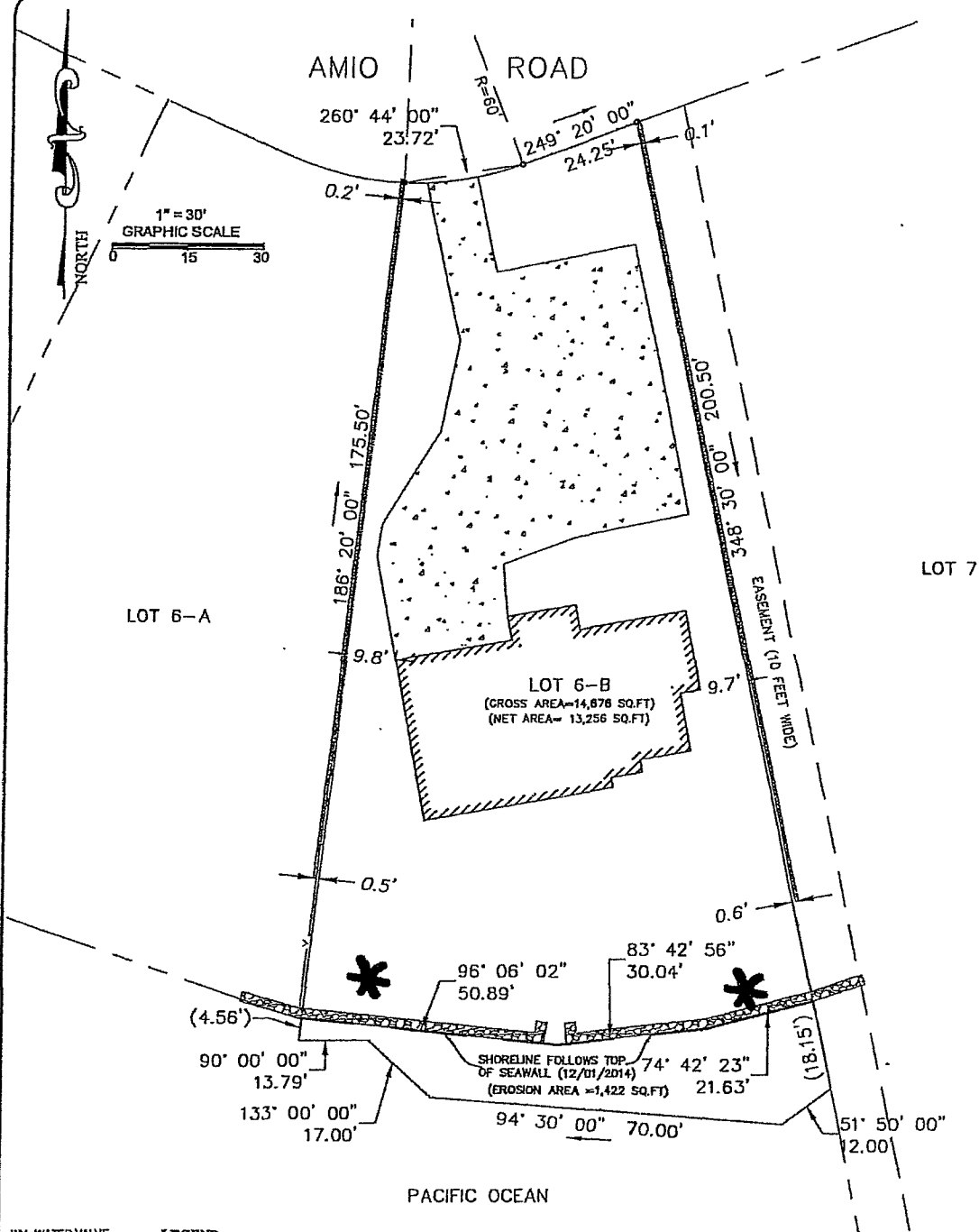


Lorna A. Nishimitsu

Enclosures

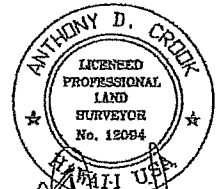
cc: Mr. and Mrs. Edmund Gregoire (w/enclosures, via email)

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SHORELINE SURVEY MAP  
LOT 6-B  
PORTION OF LOT 6  
"KUKUIULA SUBDIVISION"  
FILE PLAN 458

AT KUKUIULA, KOLOA, COUNTY OF KAUAI,  
STATE OF HAWAII



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION.  
ANTHONY D. CROOK  
LICENSED PROFESSIONAL LAND SURVEYOR  
CERTIFICATE No. 12084

AILANA SURVEYING & GEOMATICS LLC  
PHONE (808)346-1818  
FAX 1-800-855-6297  
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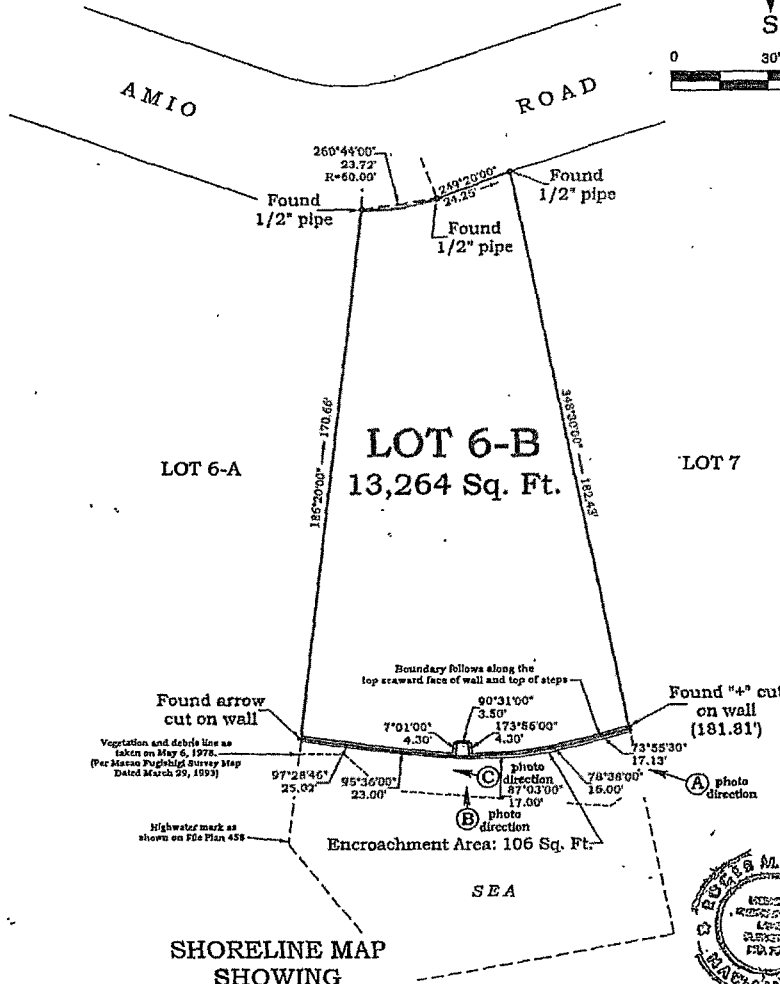
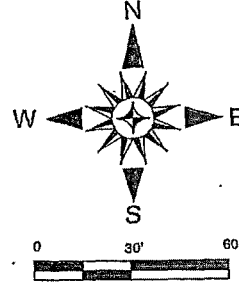
MAP DATED: DECEMBER 10, 2014

TMK(4) 2-6-011-019

EXHIBIT " 1 "

Notes:

1. Only the improvements on this map have been field located.
2. Map is based on monuments as shown on map.
3. Underground utilities, septic tanks, etc. were not field located except as noted.
4. The actual location, existence, size, depth, condition or capacity of any drainage systems, sub-surface water system, cesspool/septic tank system, sewer line and utility lines to the property is not part of this map. The appropriate governmental and/or utility agencies should be contacted for this information.



SHORELINE MAP  
SHOWING  
LOT 6-B

4650 Amio Road  
Kukui'ula Subdivision  
Being a portion of Royal Patent 6714,  
Land Commission Award 7714-B, Apana 2,  
to Mose Kekuaiwa no M. Kekuanaoa  
Kukui'ula, Kōloa, Kaua'i, Hawai'i  
Tax Map Key (4) 2-6-011: 019  
Date of Field Survey: October 22, 2015



THIS MAP WAS PREPARED BY ME  
OR UNDER MY SUPERVISION  
*Roger M. Cairns*  
ROGER M. CAIRNS  
Licensed Professional Land Surveyor  
Certificate Number 7919 Expires 04/30/16  
CLS-HAWAII  
Land Surveying & Mapping  
P.O. Box 777  
Kalaheo, Kaua'i, Hawai'i  
808.635-3700 \* fax 808.592.2475  
surveyor1@CLSHawaii.com

NS0578L  
Traverse PC

page 1 of 2

EXHIBIT '2'

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LANDS  
STATE PARKS

DLNR-OCCL:NF

Encroachment KA-16-5

Edmund D. Gregoire  
W3133 County Road PP  
Sheboygan Falls, WI 53085

JAN 27 2016

SUBJECT: Request to Resolve State Land Encroachment at 4650 Amio Road, Kukuilua, Koloa, Kauai; Tax Map Key (4) 2-6-011:019

Dear Mr. Gregoire,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of the requested evidence regarding the date of establishment of the subject encroachment and map showing the metes and bounds along the original seaward property boundary for the subject property located at TMK (4) 2-6-011:19.

The photos included with your Shoreline Encroachment Information Sheet, received by OCCL on December 1, 2015, show a concrete seawall and stairs fronting the subject property. On the Shoreline Encroachment Information Sheet, you note that the encroachment is approximately 106 square feet. The shoreline survey map dated October 22, 2015 shows the shoreline running along the top seaward face of the seawall and the top of the steps. The survey map dated September 25, 2008, shows the original metes and bounds of the seaward property boundary seaward of the concrete seawall and stairs. You include a permit inquiry from the County of Kauai (the County) that shows a building permit for a "fence under 6 feet residential" that was permitted by the County on March 7, 1995.

A shoreline certification map dated May 24, 1993 shows an existing retaining wall in the same location as the existing concrete seawall and stairs. An inquiry to the County showed that in 1983, post-Hurricane Iwa in November 1982, the County issued SMA (M) 83-16, permitting the replacement of the retaining wall in the same location as the existing concrete seawall. A shoreline certification map dated May 18, 1978 shows an existing retaining wall built landward of the shoreline in the same location as the existing concrete seawall and stairs.

The Board of Land and Natural Resources (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying out this policy, OCCL established criteria to guide decision-making over specific cases. The criteria are as follows:

EXHIBIT "3"

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's recommendations on the disposition of shoreline encroachments.

Surrounding Land Uses:

*The surrounding land uses are primarily residential. The adjacent property to the west is fronted by a similar concrete seawall that appears to be contiguous with and adjoined to the subject property's seawall. The adjacent property to the east is fronted by a stone and concrete seawall. Amio Road runs along the northern boundary of the property.*

Beach Resources:

*This is an irregular, exposed rocky shoreline on a basaltic headland with perched sand deposits on the upper beach and basalt cobble and boulders in the lower beach fronting the subject property.*

Public Access:

*There is a public access point located approximately 250 feet west of the subject property near the Kukuihula Small Boat Harbor. Alongshore access is available along the rocky shoreline fronting the property.*

Effect of Removing the Encroachment on:

*Beach Resources: The subject property is fronted by a narrow sand/cobble beach extending out to basalt cobble and boulders. Removal of a small portion of the seawall will not improve beach resources.*

*Public Access: There is alongshore public access fronting the subject property and the adjacent property to the west. Removal of a small portion of the seawall will not improve public access.*

*Effect on Adjacent Properties: Removal of a small portion of the seawall would not have significant adverse effects on the seawalls on the adjacent properties.*

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the requirements stated in HRS §205A, HRS §183C, and in OCCL's evaluation

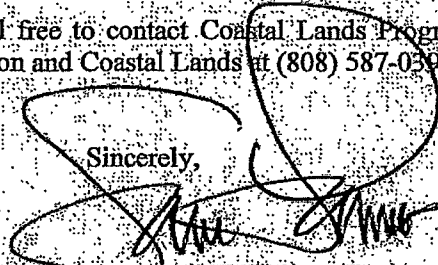
Edmund Gregoire

Encroachment: KA-16-5

criteria would support a disposition request being processed for the subject shoreline encroachments.

Should you have any questions, please feel free to contact Coastal Lands Program Specialist Natalie Farinholt in the Office of Conservation and Coastal Lands at (808) 587-0399 or via email at [Natalie.A.Farinholt@hawaii.gov](mailto:Natalie.A.Farinholt@hawaii.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a large, loopy circular flourish.

SAMUEL J. LEMMO, Administrator  
Office of Conservation and Coastal Lands

Cc: Chairperson  
County of Kauai  
Cal Miyahara, Land  
Ian Hirokawa, Land  
Kauai Land